

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 1882 of 1999

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIKABHAI MAKANBHAI PATEL - Petitioner(s)

Versus

KOHYABHAI BHAGWANBHAI CHHOVALA & 2 - Respondent(s)

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Appearance :

MR JITENDRA M PATEL for Petitioner(s) : 1,

Respondent(s) : 1, 3 SERVED ,

MR SHAILESH C PARIKH for Respondent(s) : 2,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 17/07/2007

ORAL JUDGMENT

This petition arises from the proceedings under
Section 70-B of the Bombay Tenancy and Agricultural
Lands Act, 1948 (hereinafter referred to as, "the

Act"). The petitioner herein claims that he was a tenant in the land Block No.181 situated at village Rola, taluka Valsad. His application made under Section 70-B of the Act for a declaration that he was a tenant was accepted by the Mamlatdar by order made on 24th April, 1995. Feeling aggrieved, the respondents-owners filed Tenancy Appeal No.7/1996 which came to be allowed by the Deputy Collector by order dated 25th March, 1996. According to the Deputy Collector, the land Block No.181 was confiscated to the State Government for breach of conditions of grant. Thereafter, a re-grant was made in the year 1984 in favour of the respondents. The Deputy Collector was, therefore, pleased to hold that as the re-grant was made as late as in the year 1984, the claim of the petitioner of his possession for the past 17 years was not acceptable. The Appeal was accordingly allowed on 23rd December, 1996. The said order has been upheld by the Gujarat Revenue Tribunal on 10th April, 1997 in Revision Application No.11/1997. Therefore, the present petition.

The Deputy Collector has solely relied upon the

fact that the re-grant of the land was made to the respondents in the year 1984 under Revenue Entry No.2040 dated 30th March, 1985. As the land was unalienable and impartible, the landlord could not have inducted a tenant.

It is apparent that the Deputy Collector has decided the appeal before him on a mere presumption without ascertaining the facts as to the cultivation by the tenant. Such a presumption is not supported by evidence on record. It was the duty of the Deputy Collector to verify and find out the facts and to record the findings of fact. This having not been done, the dispute deserves to be remanded to the Deputy Collector for appropriate adjudication.

In view of the above facts, the petition is allowed. The impugned judgment and order dated 10th April, 1997 of the Gujarat Revenue Tribunal passed in Revision Application No.11/1997 and the order dated 23rd December, 1996 of the Deputy Collector, Valsad passed in Appeal No.7/1996 are quashed and set-aside. The matter is remanded to the Appellate Authority for

hearing and decision afresh in accordance with law. The Deputy Collector will have to give a clear finding as to the presence of the tenant on the disputed land. The Deputy Collector will also consider and decide all the matters at issue before him. Considering the passage of time, the Deputy Collector will give due priority to the present matter.

Rule is made absolute in the above terms. The parties shall have to bear their own cost.

(Ms. R.M.Doshit, J.)

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